



[Billing Code 3290-F9]

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**[Docket No. USTR–2018–0037]**

**Request for Comments and Notice of a Public Hearing Regarding the 2019 Special 301 Review**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for comments and notice of public hearing.

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**SUMMARY:** Each year, the Office of the United States Trade Representative (USTR) conducts a Special 301 review to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Based on this review, the United States Trade Representative (Trade Representative) determines which, if any, of these countries to identify as Priority Foreign Countries. USTR requests written comments that identify acts, policies, or practices that may form the basis of a country's identification as a Priority Foreign Country or placement on the Priority Watch List or Watch List. USTR also requests notices of intent to appear at the public hearing.

**DATES:**

February 7, 2019 at 11:59 pm EST: Deadline for submission of written comments, hearing statements, and notices of intent to appear at the hearing from the public.

February 21, 2019 at 11:59 pm EST: Deadline for submission of written comments, hearing statements, and notices of intent to appear at the hearing from foreign governments.

February 27, 2019: The Special 301 Subcommittee will hold a public hearing at the Office of the United State Trade Representative, 1724 F Street NW, Rooms 1&2, Washington DC. If necessary, the hearing may continue on the next business day. Please consult the USTR website at <https://ustr.gov/issue-areas/intellectual-property/Special-301>, for confirmation of the date and location and the schedule of witnesses.

March 5, 2019 at 11:59pm EST: Deadline for submission of post-hearing written comments from persons who testified at the public hearing.

On or about April 26, 2019: USTR will publish the 2019 Special 301 Report within 30 days of the publication of the National Trade Estimate (NTE) Report.

**ADDRESSES:** USTR strongly encourages electronic submissions made through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the submission instructions in section IV below. The docket number is USTR–2018–0037. For alternatives to on-line submissions, please contact USTR at [Special301@ustr.eop.gov](mailto:Special301@ustr.eop.gov) before transmitting a comment and in advance of the relevant deadline.

**FOR FURTHER INFORMATION CONTACT:** Sung Chang, Director for Innovation and Intellectual Property, at [special301@ustr.eop.gov](mailto:special301@ustr.eop.gov). You can find information about the Special 301 Review at [www.ustr.gov](http://www.ustr.gov).

SUPPLEMENTARY INFORMATION:

## **I. Background**

Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), commonly known as the “Special 301” provisions, requires the Trade Representative to identify countries that deny adequate and effective IPR protections or fair and equitable market access to U.S. persons who rely on intellectual property protection. The Trade Act requires the Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies or practices that are the basis of a country’s identification as a Priority Foreign Country can be subject to the procedures set out in sections 301-305 of the Trade Act (19 U.S.C. 2411-2415).

In addition, USTR has created a “Priority Watch List” and “Watch List” to assist the Administration in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs the Special 301 Subcommittee (Subcommittee) of the Trade Policy Staff Committee. The Subcommittee reviews information from many sources, and consults with and makes recommendations to the Trade Representative on issues arising under Special 301. Written submissions from the public are a key source of information for the Special 301 review process. In 2019, USTR will conduct a public hearing as part of the review process and will allow hearing participants to provide additional

information relevant to the review. At the conclusion of the process, USTR will publish the results of the review in a Special 301 Report.

USTR requests that interested persons identify through the process outlined in this notice those countries whose acts, policies, or practices deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection.

The Special 301 provisions also require the Trade Representative to identify any act, policy, or practice of Canada that affects cultural industries, was adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). USTR invites the public to submit views relevant to this aspect of the review.

The Special 301 provisions require the Trade Representative to identify all such acts, policies, or practices within 30 days of the publication of the NTE Report. In accordance with this statutory requirement, USTR will publish the annual Special 301 Report about April 26, 2019.

## **II. Public Comments**

To facilitate the review, written comments should be as detailed as possible and provide all necessary information to identify and assess the effect of the acts, policies, and practices. USTR invites written comments that provide specific references to laws, regulations, policy statements, including innovation policies, executive, presidential, or other orders, and administrative, court, or other determinations that should factor in the review. USTR also requests that, where relevant, submissions mention particular regions,

provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention. Finally, submissions proposing countries for review should include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry, and the U.S. workforce caused by the denial of adequate and effective intellectual property protection. Comments that include quantitative loss claims should include the methodology used to calculate the estimated losses.

### III. Public Hearing

The Special 301 Subcommittee will convene a public hearing on February 27, 2019, in Rooms 1 and 2, 1724 F Street NW, Washington DC, at which interested persons, including representatives of foreign governments, may appear to provide oral testimony. If necessary, the hearing may continue on the next business day. Because the hearing will take place in Federal facilities, attendees must show photo identification and will be screened for security purposes. Please consult the USTR website at <https://ustr.gov/issue-areas/intellectual-property/Special-301>, to confirm the date and location of the hearing and to obtain copies of the hearing schedule. USTR also will post the transcript and recording of the hearing on the USTR website as soon after the hearing as possible. Witnesses must deliver prepared oral testimony, which is limited to five minutes, before the Special 301 Subcommittee in person and in English. Subcommittee member agencies may ask questions following the prepared statement.

Notices of intent to testify and hearing statements from the public are due on February 7, 2019, and from foreign governments on February 21, 2019. The submissions

must be in English and must include: (1) the name, address, telephone number, fax number, email address, and firm or affiliation of the individual wishing to testify, and (2) a hearing statement that is relevant to the Special 301 review.

#### **IV. Submission Instructions**

All submissions must be in English and sent electronically via [www.regulations.gov](http://www.regulations.gov) using docket number USTR–2018–0037. To submit comments, locate the docket (folder) by entering the number USTR–2018–0037 in the ‘Enter Keyword or ID’ window at the [www.regulations.gov](http://www.regulations.gov) home page and click ‘Search.’ The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting ‘Notice’ under ‘Document Type’ on the left side of the search-results page, and click on the link entitled ‘Comment Now!’.

USTR requests that you provide comments in an attached document, and that you name the file according to the following protocol, as appropriate: Commenter Name, or Organization\_2019\_Special\_301\_Review\_Comment, or Notice of Intent to Testify or Hearing Testimony. Please include the following information in the ‘Type Comment’ field: “2019 Special 301 Review” and whether the submission is a comment, a request to testify at the hearing, or hearing testimony. Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If you prepare the submission in a compatible format, please indicate the name of the relevant software application in the ‘Type Comment’ field. For further information on using the [www.regulations.gov](http://www.regulations.gov) website, please select ‘How to Use Regulations.gov’ on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments that contains business confidential information, the file name of the business confidential version should begin with the characters 'BC'. Any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and that they would not customarily released it to the public. Additionally, the filer should type 'Business Confidential' in the 'Type Comment' field.

Filers of comments containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character 'P'. The 'BC' and 'P' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

As noted, USTR strongly urges commenters to submit comments through [www.regulations.gov](http://www.regulations.gov). You must make any alternative arrangements before transmitting a

document and in advance of the relevant deadline by contacting USTR at  
Special301@ustr.eop.gov.

USTR will place comments in the docket and they will be open to public inspection,  
except business confidential information. You can view comments on the  
www.regulations.gov website by entering Docket Number USTR–2018–0037 in the  
‘Search’ field on the home page.

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Office of the United States Trade Representative.*

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